



Michigan Supreme Court
State Court Administrative Office
Trial Court Services Division
Michigan Hall of Justice
P.O. Box 30048
Lansing, MI 48909

February 20, 2007

TO: Michigan Court Forms Committee (Circuit and District representatives only)

FROM: Amy L. Byrd, Forms Analyst

RE: Agenda and Materials for **March 8, 2007 Meeting**

PLACE: **Michigan Hall of Justice**, 925 West Ottawa, downtown Lansing (map enclosed)

Below is a schedule of subjects for discussion. You have been provided with those materials pertinent to the court you represent.

Notice of Minor Revisions

The following form will be revised to correct cites, typographical errors, grammatical errors, and other similar problems: MC 82, MC 204, MC 210, MC 216a, MC 219, MC 227, MC 258, MC 281b, DCY 226, CC 217, and CC 219b.

District Session – 9:30 a.m. - 11:00 a.m.

1. CIA 04, Judgment, Civil Infraction

A request has been made to include reference to formal hearing in item 2. MCR 4.101 does not preclude someone from filing a motion to set aside default judgment for nonappearance for good cause at a formal hearing.

2. DC 87, Affidavit of Judgment Debtor

Several requests have been made to reinstate the field for the full social security number because it is used for collection purposes. The Michigan Treasury Department requires the full social security number to prevent mismatches. In addition, plaintiffs need it in order to eliminate the need to resort to discovery proceedings in order to get the number for collection purposes. The Privacy Act permits the collection of the full social security number when it is needed for collection purposes.

3. Entry of Default by District Court Clerk Based on Review of Court File

The development of a new form is requested for use by the district court clerk to enter a default based on review of the court file pursuant to MCR 2.603(A)(1).

In the Author's Commentary on Rule 2.603 of *Michigan Court Rules Practice*, Ronald S. Longhofer states in §2603.3 (page 335) that "the default of a party may appear from a review of the court file. This is the practice utilized in the District Court, where defaults are entered by the court clerk if the defendant has not answered or otherwise defended within the time permitted. The District Court Clerk will enter such defaults without request of any party, and without the filing of an affidavit by a party."

A question for the Committee is whether this practice will cause a conflict with the requirements of 50 USC 521 and MCL 32.517. 50 USC 521 states that "... [T]his section applies to any civil action or proceeding in which the defendant does not make an appearance. (b) Affidavit requirement. (1) Plaintiff to file affidavit. In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit - (A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service."

Since this default would be entered by the clerk, there will be no affidavit from the plaintiff. Is it necessary for the court to make the necessary determination before judgment can be entered? If it is required, consider also a suggestion regarding MC 07 and MC 07a that the affidavits include space for the affiant to state the facts upon which the conclusion regarding the defaulted party's military status is based.

4. Demand for Possession, Illegal Drug Use/Possession

The development of a new form is requested to assist landlords in complaints pursuant to MCL 600.5714(1)(b). The Chief of Staff of the Wayne County Office of the Prosecuting Attorney believes this form will make it clear to both tenants and neighbors as to why a landlord is seeking eviction and to make it clear to court clerks their obligation to accept these complaints for filing. A form used by the Wayne County Office of the Prosecuting Attorney is provided.

5. Small Claims Appeal of Right

The development of a new form is requested for use under MCR 4.401(D). A form used by the 46th District Court is provided as a sample.

6. Affidavit and Counterclaim, Small Claims

Pursuant to MCL 600.8423(1), the State Court Administrative Office is required to have a form for filing a counterclaim in small claims. This requirement has existed since 1968, but no request has ever been made for the form. Can DC 84 be used if the case entitlement is amended? Or should a separate form be created?

7. Complaint and Summons Regarding Dangerous Animal and Order Regarding Dangerous Animal

The development of these forms was approved by the Forms Committee a number of years ago. Drafts have been prepared by the State Court Administrative Office.

8. Advice Concerning Appeal

Are forms necessary to advise defendants of the right to appeal pursuant to MCR 6.610(F)(3) and to appoint counsel pursuant to MCR 6.625(B), or is it sufficient to advise defendants on the record of the rights? MC 222 could be used by defendants who want to request court appointed counsel.

Joint Session - Circuit and District - 11:00 a.m. - 12:00 noon

1. Old Business

Dave Wiacek and Sidney McBride were going to draft a complaint/request for habeas corpus. Is this still needed/wanted?

2. Proofs of Service

It is suggested that proofs/returns of service contain information identifying the name, address, telephone number, and title/capacity of the person making service, primarily because the signatures are often illegible, making it difficult to identify the "process server." Included are comments made during publication

3. MC 01a, Summons and Complaint

It is recommended the title of this form be changed to Complaint since it has no summons information on it. In addition, boxes for the names and addresses of the parties should be added so that the form complies with the captioning requirements of MCR 2.113(C).

4. MC 01c, Summons and Complaint With Affidavit (Account Stated)

It is recommended that this form be developed for use under MCR 2.111(B)(2) and MCL 600.2145. A draft is provided including a comment made during publication.

5. MC 07, Default Request, Affidavit, and Entry

It is recommended that item 2 be revised to require a bill of costs only when the statutory limit is exceeded and to separate from the field for the amount of damages any prefilng interest that has been charged as specified by contract pursuant to MCL 600.6455.

Instructions and definitions have also been added to the foot of the form. Other minor suggested changes have been highlighted. A draft is provided.

It was also suggested that the affidavit include space for the affiant to state the facts upon which the conclusion regarding the defaulted party's military status is based.

6. MC 07a, Default Request, Affidavit, Entry and Judgment (Sum Certain)

It is recommended that item 2 be revised to require a bill of costs only when the statutory limit is exceeded and to separate from the field for the amount of damages any prefilng interest that has been charged as specified by contract pursuant to MCL 600.6455.

Instructions and definitions have also been added to the foot of the form. Other minor suggested changes have been highlighted. A draft is provided.

It was also suggested that the affidavit include space for the affiant to state the facts upon which the conclusion regarding the defaulted party's military status is based.

It has been suggested that this form is defective because notice of default entry is not served before default judgment is entered and served. One of the grounds for setting aside default is that notice was not given. See the Author's Commentary on Rule 2.603 of *Michigan Court Rules Practice*, where Ronald S. Longhofer states in §2603.13 (page 345) that "[i]n *Gavulic v. Boyer*,⁶ the court held that a failure to notify a party of the entry of a default (as opposed to entry of a default judgment) is a substantial defect in the proceedings and thus sufficient to show "good cause."⁷ Since there is no requirement in MCR 2.603(B)(2) for the default entry to be noticed before entry of the judgment as it does in MCR 2.603(B)(1)(b), doesn't notice of both the default entry and judgment together suffice? The defendant still has the opportunity to seek to have the entry and judgment set aside for good cause.

7. MC 10, Judgment

It is recommended that prefilng and postfilng interest be stated separately in the judgment. A draft is provided.

Lunch - 12:00 noon - 12:30 p.m.

Joint Session continued - 12:30 p.m. - 2:30 p.m.

8. MC 12, Request and Writ for Garnishment (Periodic)

It is suggested that instructions be added for the plaintiff to assist in completing item 2. A draft is provided.

9. MC 13, Request and Writ for Garnishment (Nonperiodic)

It is suggested that instructions be added for the plaintiff to assist in completing item 2. A draft is provided.

10. MC 20, Affidavit and Order, Suspension of Fees/Costs

The Probate Section of the Michigan Court Forms Committee approved, contingent upon approval of the other sections of the Committee, the addition of a field for the number of people living in the household since that number is used in determining the poverty level, the addition of a description of the pleading that is attached to the affidavit so that the judge can quickly determine the kind of case involved, and the addition of a field for the amount of the required fee. A draft is provided.

11. MC 32, Notice of Case Evaluation and Acceptance or Rejection of Award

It is suggested that an item 3 be added pursuant to MCR 2.403(K)(5) and MCL 600.4915. A draft is provided.

12. MC 52, Request and Writ for Garnishment (Income Tax Refund/Credit)

It is suggested that instructions be added for the plaintiff to assist in completing item 2. A draft is provided.

13. MC 62, Affidavit and Notice of Entry of Foreign Judgment

These affidavits will rarely be notarized in Michigan because the judgment creditors are out-of-state. It is recommended the notary section be revised accordingly. See also comment made during publication.

14. MC 96, Judgment of Contempt

It is suggested that probation be added as an option pursuant to 2006 PA 544, effective March 30, 2007 (MCL 600.1715) and a parenthetical statement indicating that a separate order of probation is attached. Should DC 243 be changed to accommodate its use in civil contempt proceedings?

15. MC 207, Commitment Order, Not Guilty by Reason of Insanity

It is recommended the note to the defendant be changed to make it clearer that there are some instances where the fingerprints and arrest card may not be destroyed within 60 days of this order (i.e. when defendant has had a prior conviction, the court must order the fingerprints and arrest card destroyed pursuant to MCL 28.243[12][h]). The recommended language is "TO THE DEFENDANT: Your fingerprints and arrest card will be destroyed by the Michigan State Police within 60 days of the date of this order when permitted by MCL 28.243."

16. MC 218, Order Revoking Release and Forfeiting Bond, Notice of Intent to Enter Judgment

It is recommended that a section be added to provide the surety a day certain to show cause why judgment should not be entered for the full amount of the bail or surety bond pursuant to MCL 765.28(1). A draft is provided.

17. MC 235, Motion and Order for Destruction of Fingerprints and Arrest Card

It is recommended that a use note be added and that item 2 be deleted to make it clearer when this form is to be used. A draft is provided.

Also provided is a recent Court of Appeals case that an individual has suggested would require this form to be modified.

18. MC 242, Assignment to Youthful Trainee Status

It is suggested that an item be added for specifying the fine and minimum state costs, restitution, assessments, reimbursements, attorney fees, and other costs when either item 6a or 6d is checked. A draft is provided.

19. MC 245, Motion and Order for Discharge from Probation

It is suggested that item 5 be updated to comply with 2006 PA 443, effective November 27, 2006. A draft is provided.

20. MC 256, Summons, Criminal

It is suggested that a field be added for issuing the summons in the name of a local entity rather than the State of Michigan. A draft is provided.

21. MC 262, Order of Acquittal/Dismissal or Remand

It is recommended the note to the defendant be changed to make it clearer that there are some instances where the fingerprints and arrest card may not be destroyed within 60 days of this order (i.e. when defendant has had a prior conviction, the court must order the fingerprints and arrest card destroyed pursuant to MCL 28.243[12][h]). The recommended language is “TO THE DEFENDANT: Your fingerprints and arrest card will be destroyed by the Michigan State Police within 60 days of the date of this order when permitted by MCL 28.243.”

Also provided is a recent Court of Appeals case that an individual has suggested would require this form to be modified.

22. MC 263, Motion/Order of Nolle Prosequi

It is recommended the note to the defendant be changed to make it clearer that there are some instances where the fingerprints and arrest card may not be destroyed within 60 days of this order (i.e. when defendant has had a prior conviction, the court must order the fingerprints and arrest card destroyed pursuant to MCL 28.243[12][h]). The recommended language is “TO THE DEFENDANT: Your fingerprints and arrest card will be destroyed by the Michigan State Police within 60 days of the date of this order when permitted by MCL 28.243.”

Also provided is a recent Court of Appeals case that an individual has suggested would require this form to be modified.

23. MC 289, Order for Assignment of Wages

It is suggested that a use note be added to make it clear that an agreement is not required when the obligation is ordered pursuant to MCL 769.1k and MCL 771.3(2)(f). It is also suggested that an instruction be included to use the calculation sheet from the Garnishee Disclosure, form MC 14, when required. A draft is provided.

24. MC 295, Order Delaying Sentence

The development of this form is recommended to standardize the practice for delaying sentence as prescribed by MCL 771.1(2). A draft is provided.

Circuit Session - 2:30 p.m. - 3:30 p.m.

1. CC 379, Motion to Modify, Extent or Terminate Personal Protection Order

It has been suggested that the form does not adequately represent MCR 3.707(B). The rule states that the petitioner may file an ex parte motion to extend the effectiveness without hearing; however, the form leads one to believe that a hearing is required. A draft is provided along with comments made during publication. Based on the comments, it is recommended the form not be changed, the primary reason being that the court rule appears to allow the court to issue an extension either ex parte or after hearing. The form and court rule provide the flexibility to accommodate varying circumstances.

2. New Forms for Pro Se Litigants to Obtain Restoration of License

The Committee previously agreed that forms should be developed to assist pro se litigants to obtain driver's license restoration. Drafts were initiated by Hon. William C. Buhl and completed by the Driver License Appeal Division. Final drafts are provided.

3. Application for Leave to Appeal

The Committee previously agreed that forms should be developed to assist pro se litigants to file an application for leave to appeal from the district court to the circuit court. Drafts are provided by Hon. William C. Buhl.

4. Forms for Domestic Relations Arbitration

The Effective Practices Action Group of the Alternative Dispute Resolution Section of the Michigan State Bar suggests that forms be developed as a mechanism for monitoring the progress of domestic relations cases submitted to arbitration. Under current practices, cases submitted to arbitration are considered disposed by the court. Should forms be developed before court rule procedures are implemented?

5. Pro Se Divorce Forms

Concept drafts were provided to the Michigan Judges Association last year to determine whether the Committee was heading in the right direction as to the scope of the project. Due to the extent of work involved in developing these forms, a subcommittee will be formed. Once the forms have been finalized by the subcommittee, they will be published for comments and presented to the Committee for review and approval. It is estimated that drafts will be available for publication in January, 2008.

Attachments

cc: Regional Administrators



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P.O. Box 30048
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February 20, 2007

Hon. William C. Buhl
Chair, Michigan Court Forms Committee
36th Circuit Court
Courthouse
Paw Paw, MI 49079

Dear Judge Buhl:

Enclosed is the agenda and all materials for the March 8, 2007 Michigan Court Forms Committee. As in 2006, you will be presiding over the entire meeting as Chairperson. Thank you for continuing in this position.

If you have any questions, please call me at (517) 373-4864.

Sincerely,

Amy L. Byrd
Forms Analyst
Trial Court Services

Enclosures

CIRCUIT SESSION

DISTRICT SESSION

JOINT SESSION